

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 22nd Floor
San Francisco, California 94105**

INITIAL STATEMENT OF REASONS

Date: November 13, 2002

RH02022283

**REGULATIONS ESTABLISHING GOVERNING PROCEDURE
FOR DEPARTMENT OF INSURANCE HEARINGS NOT
OTHERWISE SUBJECT TO SPECIFIC REGULATIONS**

INTRODUCTION

Pursuant to Government Code section 11400.20, the Department of Insurance proposes to amend California Code of Regulations, Title 10, Chapter 5, by adding a new Subchapter 10, Article 1, with four new provisions enumerated section 2700, 2700.1, 2701 and 2702. The proposed amendments to Title 10 regulations establish the general governing procedure for those adjudicative hearings conducted by an administrative law judge from the Department of Insurance that are not already governed by more precisely targeted regulations or are not, by statute, subject to the provisions of Chapter 5 of the Government Code.

The Insurance Commissioner and the Department of Insurance believe that the proposed regulations are necessary to clarify the governing procedure for litigants and to allow the Department to conform to the mandate of Government Code section 11425.10 that an agency “shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding.”

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION

The specific purpose of each new section and the rationale for the Department’s determination that each new section is reasonably necessary to carry out the purpose for which it is proposed are set forth below. Essentially, these new sections carry out the intent of the Legislature to allow an agency to establish its own governing procedure for adjudicative hearings and to codify those procedures so that litigants have access to them. The provision of this information is reasonably necessary for purposes of clarity and ease of reference.

§2700 sets for the statutory authority for the promulgation of the regulations.

§2700.1 explains the purpose of the regulations -- to provide a general governing procedure for those adjudicative hearings conducted by a presiding officer from the Department of Insurance

that are not governed by more precisely targeted regulations or are not, by statute, subject to the provisions of Chapter 5 of the Government Code. This section is necessary to advise litigants that these regulations are generally applicable, but that other regulations may be more applicable to a particular proceeding.

§2701 establishes that all Department of Insurance adjudicative hearings shall allow both written and live witness testimony subject to motions to strike and cross-examination. This section also gives the presiding officer the authority to limit the length and repetitiveness of all testimony, and to control the order and manner of presentation of witnesses. This section is necessary to eliminate confusion and conserve state and private resources that might otherwise be spent arguing about appropriate procedure by setting forth a general procedure governing Department of Insurance adjudicative hearings.

§2702 authorizes the presiding officer to prescribe all other procedures for an adjudication in more detail in a Pre-Hearing Order. It explicitly authorizes the presiding officer to address scheduling, allowable pleadings and motions, use of discovery, rebuttal rights, use of demonstrative evidence, and briefing in a pre-hearing order. This section is necessary because the Department of Insurance provides hearings pursuant to myriad statutes on wholly disparate subject matters. Each hearing involves different facts as well as litigants with widely varying legal sophistication. Consequently, as a general rule, the presiding officer requires the flexibility to afford the process that is due in a given case.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of these amendments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner and the Department have determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. Performance standards were considered but were rejected as an unreasonable and impracticable alternative because the enabling statute (Gov't. Code § 1400.20) requires regulations delineating the governing procedure.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner and the Department have identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Although performance standards were considered as an alternative, they were rejected because regulations are required to detail a governing procedure for adjudicative hearings.

PRE-NOTICE DISCUSSIONS

The Commissioner and the Department have not conducted pre-notice public discussions pursuant to Government Code Section 11346.45 because the proposed regulations do not involve complex proposals or a large number of proposals.